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**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2003 63516

DERRICK WAYNE RABURN, PT  
827 Village Square South  
Palm Springs, CA 92262

**A C C U S A T I O N**

Physical Therapy License No. PT 20241

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about September 28, 1994, the Physical Therapy Board of California issued Physical Therapy License Number PT 20241 to Derrick Wayne Raburn, PT (Respondent). The Physical Therapy License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws.

1 All section references are to the Business and Professions Code (Code) unless otherwise  
2 indicated.

3 4. Section 2660 of the Code states:

4 The board may, after the conduct of appropriate proceedings under the  
5 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or  
6 impose probationary conditions upon, or issue subject to terms and conditions any  
7 license, certificate, or approval issued under this chapter for any of the following causes:

8 (a) Advertising in violation of Section 17500.

9 (b) Fraud in the procurement of any license under this chapter.

10 (c) Procuring or aiding or offering to procure or aid in criminal abortion.

11 (d) Conviction of a crime which substantially relates to the qualifications,  
12 functions, or duties of a physical therapist. The record of conviction or a certified  
13 copy thereof shall be conclusive evidence of that conviction.

14 (e) Impersonating or acting as a proxy for an applicant in any examination  
15 given under this chapter.

16 (f) Habitual intemperance.

17 (g) Addiction to the excessive use of any habit-forming drug.

18 (h) Gross negligence in his or her practice as a physical therapist.

19 (i) Conviction of a violation of any of the provisions of this chapter or of  
20 the State Medical Practice Act, or violating, or attempting to violate, directly or  
21 indirectly, or assisting in or abetting the violating of, or conspiring to violate any  
22 provision or term of this chapter or of the State Medical Practice Act.

23 (j) The aiding or abetting of any person to violate this chapter or any  
24 regulations duly adopted under this chapter.

25 (k) The aiding or abetting of any person to engage in the unlawful practice  
26 of physical therapy.

27 (l) The commission of any fraudulent, dishonest, or corrupt act which is  
28 substantially related to the qualifications, functions, or duties of a physical

1 therapist.

2 (m) Except for good cause, the knowing failure to protect patients by  
3 failing to follow infection control guidelines of the board, thereby risking  
4 transmission of blood-borne infectious diseases from licensee to patient, from  
5 patient to patient, and from patient to licensee. In administering this subdivision,  
6 the board shall consider referencing the standards, regulations, and guidelines of  
7 the State Department of Health Services developed pursuant to Section 1250.11 of  
8 the Health and Safety Code and the standards, regulations, and guidelines  
9 pursuant to the California Occupational Safety and Health Act of 1973 (Part 1  
10 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing  
11 the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health  
12 care settings. As necessary, the board shall consult with the Medical Board of  
13 California, the California Board of Podiatric Medicine, the Board of Dental  
14 Examiners of California, the Board of Registered Nursing, and the Board of  
15 Vocational Nursing and Psychiatric Technicians, to encourage appropriate  
16 consistency in the implementation of this subdivision.

17 The board shall seek to ensure that licensees are informed of the responsibility of  
18 licensees and others to follow infection control guidelines, and of the most recent  
19 scientifically recognized safeguards for minimizing the risk of transmission of  
20 blood-borne infectious diseases.

21 5. Business and Professions Code section 2620.7 states:

22 (a) A physical therapist shall document his or her evaluation, goals, treatment  
23 plan, and summary of treatment in the patient record.

24 (b) A physical therapist shall document the care actually provided to a patient in  
25 the patient record.

26 (c) A physical therapist shall sign the patient record legibly.

27 (d) Patient records shall be maintained for a period of no less than seven years  
28 following the discharge of the patient, except that the records of unemancipated minors

1 shall be maintained at least one year after the minor has reached the age of 18 years, and  
2 not in any case less than seven years.

3 6. Section 2630 of the Code states:

4 It is unlawful for any person or persons to practice, or offer to practice, physical  
5 therapy in this state for compensation received or expected, or to hold himself or herself  
6 out as a physical therapist, unless at the time of so doing the person holds a valid,  
7 unexpired, and unrevoked license issued under this chapter.

8 Nothing in this section shall restrict the activities authorized by their licenses on  
9 the part of any persons licensed under this code or any initiative act, or the activities  
10 authorized to be performed pursuant to Article 4.5 (commencing with Section 2655) or  
11 Chapter 7.7 (commencing with Section 3500).

12 A physical therapist licensed pursuant to this chapter may utilized the services of  
13 one aide engaged in patient-related tasks to assist the physical therapist in his or her  
14 practice of physical therapy. "Patient-related task" means a physical therapy service  
15 rendered directly to the patient by an aide, excluding non-patient-related tasks. "Non-  
16 patient-related task" means a task related to observation of the patient, transport of the  
17 patient, physical support only during gait or transfer training, housekeeping duties,  
18 clerical duties, and similar functions. The aide shall at all times be under the orders,  
19 direction, and immediate supervision of the physical therapist. Nothing in this section  
20 shall authorize an aide to independently perform physical therapy or any physical therapy  
21 procedure. The board shall adopt regulations that set forth the standards and  
22 requirements for the orders, direction, and immediate supervision of an aide by a physical  
23 therapist. The physical therapist shall provide continuous and immediate supervision of  
24 the aide. The physical therapist shall be in the same facility as, and in proximity to, the  
25 location where the aide is performing patient-related tasks, and shall be readily available  
26 at all times to provide advice or instruction to the aide. When patient-related tasks are  
27 provided to a patient by an aide, the supervising physical therapist shall, at some point  
28 during the treatment day, provide direct service to the patient as treatment for the patient's

1 condition, or to further evaluate and monitor the patient's progress, and shall  
2 correspondingly document the patient's record.

3 The administration of massage, external baths, or normal exercise not a part of a  
4 physical therapy treatment shall not be prohibited by this section.

5 7. California Code of Regulations, Title 16, section 1399, states:

6 “A physical therapy aide is an unlicensed person who assists a physical therapist  
7 and may be utilized by a physical therapist in his or her practice by performing nonpatient  
8 related tasks, or by performing patient related tasks.

9 “(a) As used in these regulations:

10 “(1) A “patient related task” means a physical therapy service rendered directly to  
11 the patient by an aide, excluding nonpatient related tasks as defined below.

12 “(2) A “nonpatient related task” means a task related to observation of the patient,  
13 transport of patients, physical support only during gait or transfer training, housekeeping  
14 duties, clerical duties and similar functions.

15 “(b) “Under the orders, direction and immediate supervision” means:

16 “(1) Prior to the initiation of care, the physical therapist shall evaluate every  
17 patient prior to the performance of any patient related tasks by the aide. The evaluation  
18 shall be documented in the patient's record.

19 “(2) The physical therapist shall formulate and record in the patient's record a  
20 treatment program based upon the evaluation and any other information available to the  
21 physical therapist, and shall determine those patient related tasks which may be assigned  
22 to an aide. The patient's record shall reflect those patient related tasks that were rendered  
23 by the aide, including the signature of the aide who performed those tasks.

24 “(3) The physical therapist shall assign only those patient related tasks that can be  
25 safely and effectively performed by the aide. The supervising physical therapist shall be  
26 responsible at all times for the conduct of the aide while he or she is on duty.

27 “(4) The physical therapist shall provide continuous and immediate supervision of  
28 the aide. The physical therapist shall be in the same facility as and in immediate

1 proximity to the location where the aide is performing patient related tasks, and shall be  
2 readily available at all times to provide advice or instruction to the aide. When patient  
3 related tasks are provided a patient by an aide the supervising physical therapist shall at  
4 some point during the treatment day provide direct service to the patient as treatment for  
5 the patient's condition or to further evaluate and monitor the patient's progress, and so  
6 document in the patient's record.

7 “(5) The physical therapist shall perform periodic re-evaluation of the patient as  
8 necessary and make adjustments in the patient's treatment program. The re-evaluation  
9 shall be documented in the patient's record.

10 “(6) The supervising physical therapist shall countersign with their first initial and  
11 last name, and date all entries in the patient's record, on the same day as patient related  
12 tasks were provided by the aide.”

13 8. California Code of Regulations, Title 16, section 1399, effective February  
14 3, 2003, states:

15 (a) A physical therapist shall document in the patient record the following:

- 16 (1) Examination and re-examination
- 17 (2) Evaluation, when the patient is to be reevaluated and the reevaluation
- 18 (3) Diagnosis
- 19 (4) Prognosis and intervention
- 20 (5) Treatment plan and modification of the plan of care
- 21 (6) Each treatment provided
- 22 (7) Discharge summary

23 Each entry shall be dated and signed by the treating physical therapist. Adjacent to the  
24 treating physical therapist's signature or at least on every page if there are multiple entries  
25 on a single page shall be the printed or stamped name of the treating physical therapist.

26 9. Section 725 of the Code states:

27 Repeated acts of clearly excessive prescribing or administering of drugs or  
28 treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts

1 of clearly excessive use of diagnostic or treatment facilities as determined by the standard  
2 of the community of licensees is unprofessional conduct for a physician and surgeon,  
3 dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist.  
4 However, pursuant to Section 2241.5, no physician and surgeon in compliance with the  
5 California Intractable Pain Treatment Act shall be subject to disciplinary action for  
6 lawfully prescribing or administering controlled substances in the course of treatment of a  
7 person for intractable pain.

8 10. Section 810 of the Code states in pertinent part:

9 “(a) It shall constitute unprofessional conduct and grounds for disciplinary action,  
10 including suspension or revocation of a license or certificate, for a health care  
11 professional to do any of the following in connection with his or her professional  
12 activities:

13 \* \* \*

14 “(2) Knowingly prepare, make, or subscribe any writing, with intent to present or  
15 use the same, or to allow it to be presented or used in support of any false or fraudulent  
16 claim.

17 “(b) It shall constitute cause for revocation or suspension of a license or  
18 certificate for a health care professional to engage in any conduct prohibited under  
19 Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.”

20 11. Section 1871.4 of the Insurance Code states in pertinent part:

21 “(a) It is unlawful to do any of the following:

22 “(1) Make or cause to be made any knowingly false or fraudulent material  
23 statement or material representation for the purpose of obtaining or denying any  
24 compensation, as defined in Section 3207 of the Labor Code.

25 “(2) Present or cause to be presented any knowingly false or fraudulent written or  
26 oral material statement in support of, or in opposition to, any claim for compensation for  
27 the purpose of obtaining or denying any compensation, as defined in Section 3207 of the  
28 Labor Code.

“(3) Knowingly assist, abet, conspire with, or solicit any person in an unlawful act under this section.

\* \* \*

“For the purposes of this subdivision, ‘statement’ includes, but is not limited to, any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X-ray, test results, medical-legal expense as defined in Section 4620 of the Labor Code, other evidence of loss, injury, or expense, or payment.”

12. Section 2661.5 of the Code states:

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of the assessed costs specified in the proposed decision.

(c) When the payment directed in an order for payment of costs is not made by the licensee, the board may enforce the order of payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license or approval of any person who has failed to pay all of the costs ordered under this section.



1 (2) Notwithstanding paragraph (1), the board may, in its  
2 discretion, conditionally renew or reinstate for a maximum of one year the  
3 license or approval of any person who demonstrates financial hardship and  
4 who enters into a formal agreement with the board to reimburse the board  
5 within that one year period for those unpaid costs.

6 (f) All costs recovered under this section shall be deposited in the  
7 Physical Therapy Fund as a reimbursement in either the fiscal year in which the  
8 costs are actually recovered or the previous fiscal year, as the board may direct.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Aiding and Abetting the Illegal Practice of  
11 Physical Therapy When Utilizing an Aide)

12 13. Respondent is subject to disciplinary action under section 2660,  
13 subdivisions (j), (k) and (l), and section 2630 of the Code, in conjunction with California Code of  
14 Regulations Title 16, section 1399, in that Respondent aided and abetted the illegal practice of  
15 physical therapy in the use of an aide. The circumstances are as follows:

16 A. With respect to M.F.<sup>1</sup>, the patient was treated by physical therapy aides  
17 employed by respondent on August 14, 18, 19, 20, 25, 26, 27, September 2, 4, 5, 8, 9, 11,  
18 18, 19, 22, 23, 24, 25, 26, 30, October 1, 2, 3, 6, 7, 13, 14, 16, 20, November 10, 11, 13,  
19 17, 18, 20, 24, 25, 26, December 1, 2, 4, 2003, and January 14, 2004, without direct  
20 service rendered by respondent. The aides provided numerous treatments including joint  
21 mobilization, therapeutic exercises, ultrasound, electrical stimulation, myofascial release,  
22 traction, and also patient education and individualized instruction.

23 B. With respect to patient M.F. on the dates referenced in paragraph A,  
24 respondent failed to supervise physical therapy aides, failed to document the delegation of  
25 the physical therapy services to physical therapy aides, failed to document treatment  
26

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27  
28 1. All patients are referred to herein by their initials in order to protect their privacy. Their full names will be disclosed to Respondent upon a timely request for discovery.

1 and/or evaluation he provided to the patient on the same treatment day the aides treated  
2 the patient, and failed to sign charts.

3 C. With respect to M.F., the patient was treated by physical therapy aides  
4 employed by respondent on September 15, 16, October 23, 24, 27, 30, November 3, 4,  
5 December 8, 9, 10, 15, 16, 18, 22, 23, 26, 29, 30, 2003, and January 2, 5, 6, 8, 12, and 13,  
6 2004, and respondent countersigned these records. Treatments provided included  
7 therapeutic exercises, ultrasound, electrical stimulation, myofascial release, and also  
8 patient education and individualized instruction.

9 D. With respect to M.H., the patient was treated by physical therapy aides  
10 employed by respondent on December 5, 9, 11, 12, 15, 16, 18, 19, 22, 23, 24, 29, 30,  
11 2003, and January 2, 5, 6, and 12, 2004, and respondent countersigned these records.  
12 Treatments provided included therapeutic exercises, ultrasound, electrical stimulation,  
13 myofascial release, and also patient education and individualized instruction.

14 E. With respect to patients M.F. and M.H. on the dates referenced in  
15 paragraphs C and D above, respondent failed to document the delegation of the physical  
16 therapy services to the physical therapy aides, failed to document the treatment and/or  
17 evaluation he provided to the patients on the same treatment day the aides treated the  
18 patients, and failed to sign charts in order to identify particular services provided, and by  
19 whom the services were provided.

20 F. On January 14, 2004, physical therapy aide L.H. provided physical therapy  
21 services to patient M.F. including electrical stimulation, myofascial release, therapeutic  
22 exercise and also patient education when respondent was not on the premises.

23 G. On January 14, 2004, physical therapy aide G.P. provided physical therapy  
24 services to patient M.H. including electrical stimulation, therapeutic exercise, myofascial  
25 release, and also patient education and individual instruction when respondent was not on  
26 the premises.

27 H. On January 14, 2004, physical therapy aide R.K. provided physical therapy  
28 services including soft tissue massage to the back of patient R.Z. when respondent was

1 not on the premises.

2 I. On January 14, 2004, physical therapy aide B.G. provided physical therapy  
3 services including soft tissue massage to the back of patient M.B., ice and H-wave  
4 stimulation to the left elbow of patient B.J., and soft tissue massage to the back of patient  
5 A.E., when respondent was not on the premises.

6 J. With respect to patients M.F., M.H., R.Z., M.B., B.J., and A.E. referenced  
7 in paragraphs F through I above, on January 14, 2004, respondent failed to supervise  
8 physical therapy aides, failed to document the delegation of the physical therapy services  
9 to physical therapy aides, failed to document treatment and/or evaluation he provided to  
10 the patient on the same treatment day the aides treated the patient, failed to sign charts  
11 and utilized more than one aide engaged in patient related tasks.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Aiding and Abetting the Excessive Treatment of Patients

14 and/or Excessive Treatment of Patients)

15 14. Respondent is subject to disciplinary action under section 2660, subdivisions (k)  
16 and (l), and section 725 of the Code, in that Respondent aided and abetted in the practice of  
17 excessive treatment of patients and/or excessively treated patients with physical therapy services.  
18 The circumstances are as follows:

19 A. The facts and circumstances alleged in paragraph 13.A. through 13.J.  
20 above are incorporated here as if fully set forth.

21 B. With respect to M.F., the patient received excessive physical therapy  
22 treatment by physical therapy aides on numerous occasions between August 14, 2003,  
23 and January 14, 2004.

24 C. With respect to M.H., the patient received excessive physical therapy  
25 treatment by physical therapy aides on numerous occasions between December 5, 2003,  
26 and January 12, 2004.

27 D. With respect to R.Z., the patient received excessive physical therapy  
28 treatment on numerous occasions between September 24, 2002, and January 14, 2004.

1 E. With respect to M.B., the patient received excessive physical therapy  
2 treatment on numerous occasions between November 18, 2003, and January 14, 2004.

3 F. With respect to B.J., the patient received excessive physical therapy  
4 treatment on numerous occasions between October 3, 2003, and January 14, 2004.

5 G. With respect to A.E., the patient received excessive physical therapy  
6 treatment on numerous occasions between May 16, 2004, and January 14, 2004.

7 H. Patients M.F and M.H. were billed for extensive physical therapy  
8 treatments, patient education and individualized instruction without substantial  
9 documentation.

### 10 **THIRD CAUSE FOR DISCIPLINE**

11 (Unprofessional Conduct/Presenting False Statements)

12 15. Respondent is subject to disciplinary action under section 810 of Code in  
13 conjunction with Insurance Code section 1871.4 in that Respondent presented false statements to  
14 insurance carriers and others, for compensation. The circumstances are as follows:

15 A. The facts and circumstances alleged in paragraph 13.A., 13.B, 13.C. and  
16 13.F. above are incorporated here as if fully set forth.

17 B. Physical therapy services were billed to patient M.F.'s insurance carrier for  
18 the period October 14, 2003, through December 30, 2003. Skilled physical therapy  
19 treatments such as joint mobilization and myofascial massage/release were performed by  
20 an aide without the presence of respondent on November 10, 11, 17, and December 1, 2,  
21 and 4, 2003, yet respondent billed for these services as if they had been performed by a  
22 licensed physical therapist.

### 23 **FOURTH CAUSE FOR DISCIPLINE**

24 (Failure to Properly Document Treatment)

25 16. Respondent is subject to disciplinary action under section 2620.7 of the  
26 Code, in conjunction with California Code of Regulations, Title 16, sections 1399 and 1399.85  
27 (where applicable), in that Respondent failed to properly document physical therapy treatments.

28 A. The facts and circumstances alleged in paragraph 13.A. through 13.J.

1 above are incorporated here as if fully set forth.

2 B. With respect to patient M.F., there is no documentation or explanation of  
3 therapeutic exercises, patient education and individualized instruction which the records  
4 indicate were provided to the patient during the period August 13, 2003, through January  
5 13, 2004.

6 C. With respect to patient M.H., there is no documentation or explanation of  
7 therapeutic exercises, patient education and individualized instruction which the records  
8 indicate were provided to the patient during the period December 5, 2003, through  
9 January 12, 2004.

10 D. With respect to patient R.Z., there is no documentation of the physical  
11 therapy treatments provided to him. The progress notes indicate the patient was seen  
12 from September 24, 2002, through January 14, 2004. There is no documentation and no  
13 therapist signature for the progress notes dated November 26, 2003, and January 14,  
14 2004. There is no documentation that the patient was re-assessed or that his treatment was  
15 changed. There are no progress reports and the appropriateness of treatment cannot be  
16 determined. There is no evidence of progress made by the patient over the 16 months that  
17 he was being treated.

18 E. With respect to patient M.B., there is no documentation of the physical  
19 therapy treatments provided to her. The progress notes indicate the patient was seen from  
20 November 18, 2003, through January 14, 2004. There is no documentation and no  
21 therapist signature for the progress note dated January 14, 2004. There is no  
22 documentation that the patient was re-assessed or that her treatment was changed. There  
23 are no progress reports and the appropriateness of treatment cannot be determined. There  
24 is no evidence of progress made by the patient during the two months she was being  
25 treated.

26 F. With respect to patient B.J., there is no documentation of the physical  
27 therapy treatments provided to him. The progress notes indicate the patient was seen  
28 from October 3, 2003, through January 14, 2004. There is no documentation and no

1 therapist signature for the progress notes dated December 17, and 31, 2003, and January  
2 14, 2004. There is no documentation that the patient was re-assessed or that his treatment  
3 was changed. There are no progress reports and the appropriateness of treatment cannot  
4 be determined. There is no evidence of progress made by the patient over the three  
5 months he was being treated.

6 G. With respect to patient A.E., there is no documentation of the physical  
7 therapy treatments provided to him. The progress notes indicate the patient was seen  
8 from May 16, 2002, through January 14, 2004. There is no documentation and no  
9 therapist signature for the progress notes dated September 25, November 19, 20,  
10 December 31, 2002, March 19, May 7, June 4, 25, July 16, August 27, September 24,  
11 October 15, 2003, and January 14, 2004. There is no documentation that the patient was  
12 re-assessed or that his treatment was changed. There are no progress reports and the  
13 appropriateness of treatment cannot be determined. There is no evidence of progress  
14 made by the patient over the twenty-one months that he was being treated.

#### 15 **FIFTH CAUSE FOR DISCIPLINE**

16 (Gross Negligence)

17 17. Respondent is subject to disciplinary action under section 2660,  
18 subdivision (h), of the Code in that Respondent engaged in gross negligence in his practice as a  
19 physical therapist. The circumstances are as follows:

20 A. The facts and circumstances alleged in paragraph 16 are incorporated here  
21 as if fully set forth.

22 B. Respondent engaged in gross negligence in his practice of physical therapy  
23 when he allowed unlicensed individuals (physical therapy aides) to perform joint  
24 mobilization and/or myofascial massage/release, as more fully set forth in subparagraphs  
25 13.A., 13.B, 13.C., 13.D., 13.F and 13.G. above.

#### 26 **PRAYER**

27 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
28 alleged, and that following the hearing, the Physical Therapy Board of California issue a

1 decision:

2 1. Revoking or suspending Physical Therapy License Number PT 20241,  
3 issued to Derrick Wayne Raburn, PT;

4 2. Ordering Derrick Wayne Raburn, PT to pay the Physical Therapy Board of  
5 California the reasonable costs of the investigation and enforcement of this case, pursuant  
6 to Business and Professions Code section 2661.3;

7 3. Taking such other and further action as deemed necessary and proper.

8 DATED: December 27, 2005

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11 Original Signed By:  
12 STEVEN K. HARTZELL  
13 Executive Officer  
14 Physical Therapy Board of California  
15 Department of Consumer Affairs  
16 State of California  
17 Complainant

14 Raburn Accusation.wpd